supply the power, when the taking is purely for a private purpose. *Jeter v. Vinton-Roanoke Water Co.* (1913) 114 Va. 769; *Thom v. Georgia Mfg. Co.* (1907) 128 Ga. 187. The principal case, while sustaining the theory of "public advantage" in general, does not consider the conditions in Nebraska sufficient to widen its scope of application.

E. J. M.

EVIDENCE—PRESUMPTIONS—RES IPSA LOQUITUR—SUFFICIENCY OF EVIDENCE.—FANSHAWE V. RAWLINS (1916) 98 ATL. (N. J.) 439.—In an action to recover for the care and board of the defendant's horses, the defendant set up a counterclaim for an injury to a mare which he proved occurred while the mare was at pasture on the plaintiff's farm. He offered no additional facts as evidence to show that the plaintiff was negligent, but asked for an instruction that the burden of proof shifted, which was refused. *Held,* that there was an error, as the doctrine of *res ipsa loquitur,* though applicable, warranted merely a submission of the question to the jury.

Where the doctrine of *res ipsa loquitur* has been clearly and distinctly presented, most courts have held in the case of agisters, as well as in negligence cases generally, that the burden of proving negligence affirmatively is on the plaintiff. *Nichols v. Union Stockyards and Transit Co.* (1916) 193 Ill. App. 14; *Everitt v. Foley* (1907) 132 Ill. App. 438; *Whitaker v. Chicago, St. P. M. and O. R. Co.* (1911) 115 Minn. 140. A few courts (principally in South Carolina) have held that where it is shown that an injury happened while the animal or chattel was in the care of the defendant, the doctrine of *res ipsa loquitur* applies and the burden of proof shifts to the defendant. *Nutt v. Davison* (1913) 54 Col. 586; *Sullivan v. Charleston and W. C. R. Co.* (1910) 85 S. C. 532. But the burden of proof, in the sense of the risk of non-persuasion, never shifts during the course of a trial, but remains with the plaintiff to the end. *Casey v. Donovan* (1896) 65 Mo. App. 521. In the sense of the necessity of going forward with the evidence, to meet a *prima facie* case, the burden of proof may shift, but this does not mean that the defendant must show by the preponderance of the evidence that he used due care. *Briglio v. Holt* (1915) 147 Pac. (Wash.) 877. The principal case follows the majority rule, holding that the occurrence of an injury is merely *prima facie* evidence which may warrant, but does not compel, an inference of negligence, and does not necessarily amount to proof. *Mumma v. Easton and A. R. Co.* (1905) 73 N. J. L. 653. Unless the facts are such that only one inference can be drawn, the question is one for the jury. *Vaughn v. Bixby* (1914) 24 Cal. App. 641. The function of the maxim of *res ipso loquitur,* therefore, is merely to carry the question of negligence past the court into the field of the jury. *Sewell v. Detroit United R. Co.* (1909) 158 Mich. 407.

S. J. T.

EVIDENCE—SUBSTANTIVE LAW—ORAL AGREEMENT VARYING WRITTEN CONTRACT—PARTIAL FAILURE OF CONSIDERATION.—INTERNATIONAL HARVESTER CO. V. PARHAM (1916) 90 S. E. (N. C.) 503.—A note recited on its face that it was given for a manure spreader. The maker offered to prove